

Appl. No. 10/643,722
Amdt. dated December 22, 2004

months were provided to reply. The Office action was mailed August 31, 2004 (copy of cover sheet with mailing date attached as EXHIBIT C), and on its face gives a 3 month response period, which would allow until November 30, 2004, to reply without extension fees. Applicant's response was filed November 30, 2004, within the period for response set by the Office action.

If applicant cannot rely on the time period stated for reply in an Office action, then the Office action is not in compliance with 37 CFR 1.134, as it does not then state the time period set for reply. If the time period is not as set forth in the Office action, how is applicant to be certain what time period for reply applies?

Applicant respectfully requests that the response be entered without requiring applicant to pay extension fees. Applicant complied with the requirement document and its time for response instructions as given on the face of the document.

The Examiner expressed the position that it did not matter what the Office action stated, that applicant's attorney should have known that one month was the period for reply.

Applicant's attorney respectfully submits that we should be allowed to rely on the Office action on its face.

The portion of the MPEP that discusses shortened statutory periods states (MPEP 710.02):

"An indication of a shortened time period for reply should appear prominently on the first page of all copies of actions in
Page 2 — RESPONSE/PETITION (U.S. Patent Appln. S.N. 10/643,722)
[\\Files\\files\\Correspondence\\December 2004\\t1250responsepetition122204.doc]

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which a shortened time period for reply has been set so that a person merely scanning the action can easily see it."

A copy of the pertinent page of the MPEP is attached as EXHIBIT D.

Applicant respectfully submits that it has complied with the shortened response time period set by the Office action and that no further fees are due and that the response should be timely entered.

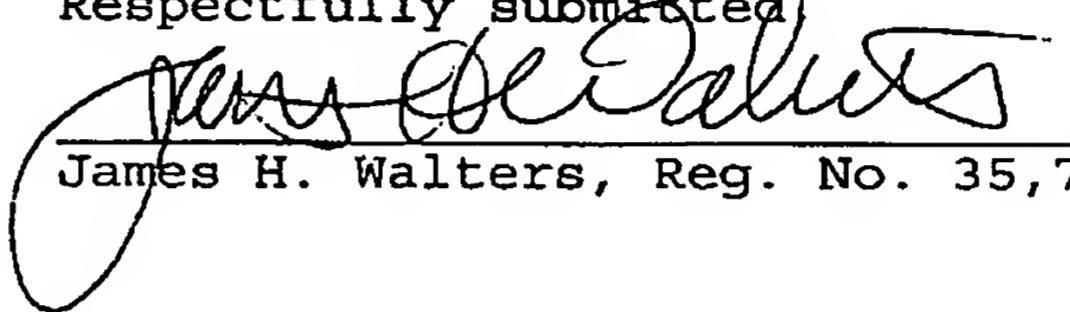
It is believed that no fees are due for entry of the response to the restriction requirement and no fee is due for this petition. However, in order to avoid delaying the prosecution of the application, applicant petitions for extension of time to enter the response to restriction requirement. Please charge deposit account 503036 for the extension fee. Applicant hereby petitions for refund of the extension fee, as it is submitted that no fee was due and that the response was timely filed. In the alternative, however, if this request for reconsideration and petition is denied, please charge any extension/petition fees due to deposit account 503036. Please refund any overpayments to deposit account 503036.

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Thank you.

The Examiner is asked to contact applicant's attorney at
503-224-0115 if there are any questions.

Respectfully submitted,


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Certification of Facsimile Transmission

I hereby certify that this correspondence is being facsimile
transmitted to the Patent and Trademark Office on this December 22,
2004.

